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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIVISION

RICKI DALE DIERENFELDT, FANNIE
JANE DIERENFELDT,

Plaintiffs,

v.

ST. JOSEPH HEALTH; ST. JOSEPH
HOSPITAL EUREKA; REDWOOD
MEMORIAL HOSPITAL; AARON BLUE,
M.D.; PERI PENMAN, D.O.; JOHN
FRANKLIN, M.D.; OPEN DOOR
COMMUNITY HEALTH CENTERS;
MATTHEW FLUKE, M.D.; DAVID
THICKMAN, M.D.; FRANCIS
CUTRUZZOLA, M.D.; UNITED STATES OF
AMERICA; and DOES 1 through 60, inclusive.

Defendants.

CASE NO. _____

NOTICE OF REMOVAL

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Federal Defendant United States of America hereby removes to
the United States District Court for the Northern District of California the state-court action filed in the
Superior Court of the State of California for Humboldt County, under Case No. DR 170239, as more

1 fully described below, pursuant to 28 U.S.C. §§ 1441(a) & (c), 1442(a)(1), & 2679 and 42 U.S.C. § 233.

2 1. On or about April 14, 2017, plaintiffs, Ricki Dale Dierenfeldt and Fannie Jane Dierenfeldt
3 filed a Complaint in Humboldt County Superior Court against defendants: a) St. Joseph Health, b) St.
4 Joseph Hospital Eureka, c) Redwood Memorial Hospital, d) Aaron Blue, M.D., e) Peri Penman, D.O., f)
5 John Franklin, M.D., g) Matthew Fluke, M.D., h) David Thickman, M.D., i) Francis Cutrozzola, M.D.,
6 j) DOES 1-60; and k) Open Door Community Health Centers.

7 2. Plaintiffs allege that, on or about April 18, 2016, all the doctors and facilities named
8 above, failed to properly diagnosed Mr. Dierenfeldt's medical condition, and negligently provided
9 substandard care, thus causing him to sustain great pain and suffering. As a proximate result, Plaintiffs
10 allege Mr. Dierenfeldt sustain injuries resulting in some permanent disability and is unable to return to
11 work. Because of Mr. Dierenfeldt's alleged injuries, Mrs. Dierenfeldt allegedly suffered from loss of
12 consortium. The plaintiffs are seeking general and special damages, economic loss, prejudgment
13 interest, and the cost of this suit.

14 3. On or about October 27, 2017, the United States Attorney's Office received a copy of
15 plaintiffs' Humboldt County Superior Court Complaint from the U.S. Department of Health and Human
16 Services ("DHHS").

17 4. On or about November 7, 2017, Open Door Community Health Centers, a federally
18 supported health center eligible for Federal Tort Claims Act coverage pursuant to the Federally
19 Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n), removed the case to federal court.

20 5. Following removal to federal court, the United States of America moved to dismiss
21 Defendant Open Door Community Health Centers with prejudice and to dismiss the United States of
22 America without prejudice. On or about December 29, 2017, the Court in Case No. 17-6460 WHO
23 granted the motion of the United States of America and remanded the case to Humboldt County
24 Superior Court.

25 6. On or about February 5, 2018, Plaintiff filed an Amendment to Complaint in Humboldt
26 County Superior Court purporting to substitute the United States of America for a Doe defendant. On or
27 about February 7, 2018, Plaintiff served a copy of the Amendment to Complaint along with a state court
28 summons on the United States Attorney's Office for the Northern District of California. A copy of the

1 Humboldt County Superior Court Complaint, Amendment to Complaint, and summons, which the only
2 superior court pleadings and process in the United States Attorney's Office's possession, are attached
3 hereto as **Exhibit A**.

4 7. All pending court dates in Humboldt County Superior Court should be automatically
5 vacated upon the filing of this Notice of Removal.

6 8. Upon removal this action will proceed as an action against the United States of America
7 pursuant to 28 U.S.C. § 1346(b) subject to limitations and exceptions applicable to those actions. 28
8 U.S.C. § 2679(d)(4).

9 9. This action is one arising under the constitution and laws of the United States, and it is
10 therefore an action over which the district courts of the United States have original jurisdiction. A civil
11 action in state court seeking damages from the United States of America for acts taken under the color of
12 federal office may be removed to federal court provided that the defendant has a colorable federal
13 defense or can otherwise articulate a connection between the performance of his duties and the acts or
14 omissions alleged. *See* 28 U.S.C. § 1331. It is removable to this court pursuant to 28 U.S.C. § 1441(a)
15 & (c).

16 10. This action is also against the United States of America. A federal defendant removing
17 under Section 1442 must demonstrate three things: that it is a "person" within the meaning of the statute,
18 that there is a "casual nexus" between its actions and the Plaintiff's claim, and that it can assert a
19 "colorable federal defense." *Durham v. Lockheed*, 445 F.3d 1247, 1251 (9th Cir. 2006). Here, Federal
20 Defendant has met the three-part test for removal set forth in *Durham*. Moreover, with respect to the
21 third requirement, "colorable" is interpreted broadly because "one of the most important reasons for the
22 removal is to have the validity of the defense of official immunity tried in a federal court." *Jefferson*
23 *County, Ala. v. Acker*, 527 U.S. 423, 431 (1999). Upon removal, Federal Defendant will assert defenses
24 arising under federal law.

25 11. This action shall be removed to district court at any time prior to trial. Thus, this Notice
26 of Removal is timely.

27 12. Pursuant to Civil L.R. 3-2(f), assignment to the Eureka/McKinleyville Division is proper,
28 since the action was originally filed in Humboldt County.

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2 13. A copy of this Notice of Removal is being served on the parties and is being filed with the
3 Clerk of the Humboldt County Superior Court, Unlimited Civil Jurisdiction. This filing will
4 automatically effect the removal action described above in its entirety to this Court for all future
5 proceedings pursuant to 28 U.S.C. § 1446(d).
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7 Dated: April 6, 2018

Respectfully submitted,

8 ALEX G. TSE

9 Acting United States Attorney

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11 MICHAEL T. PYLE

12 Assistant United States Attorney

13 Attorneys for Federal Defendant USA
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